IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Gandhi Vidya Mandir, Sardarshahar
vs.
Judge, Labour Court, Bikaner & Anr.

S.B. CIVIL WRIT PETITION NO.2232/2001 UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 03rd November, 2006

PRESENT

HONBLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.Anil Vyas, Advocate for the petitioner.

Mr.Draun Kaushik, Advocate for the respondents.

BY THE COURT

Under challenge in this writ petition is the award dated 20th May, 2000 passed by the learned Labour Court, Bikaner (in short

labour court). An industrial dispute was referred to the said court by the appropriate government vide notification dated 25th August, 2000 on the question whether the removal of the respondent-workman by the petitioner-management from their services from 24th May, 1990 was legal and justified and if not what relief the said workman was entitled to.

According to the claim of the workman, he was appointed by the Managing Secretary of the petitioner institution on the post of Clerk vide order dated 26th October, 1988 and continued in service up to 24th May, 1990 on monthly salary of Rs.600/-. When the workman demanded payment of salary in the regular pay scale and in the alternative demanded that he should be paid at least a sum of Rs.1400/- per month which was being paid to some other employees of his status, the management was annoyed with him and wanted to terminate his services. When the workman came to know about this, he filed a civil suit in the court of Munisf-cum-Judicial Magistrate, Sardarshahar in which an injunction order was passed in his favour. Subsequently, when he came to know that the suit was not maintainable, he withdrew the suit. The management by order dated 24th May, 1990 removed him from service. Even though he had completed 240 days in the calender year immediately preceding

the date of removal, the management did not either serve a notice nor even give notice pay and compensation in compliance of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). The management did not publish seniority list of the workmen as required by Rules 77 and 78 of the Industrial Disputes Central Rules (in short the Rules). When they decided to remove him from service, many of his juniors were retained in service such as Sarva Shri Vinod Kumar, Braj Lal, Mohan Singh etc. thereby violating provisions of Section 25-F of the Act. Several new employees were engaged after workmans removal such as Pradeep Sharma, Pramod Sharma, Ashok Kumar and Mahaveer Sharma, thus violating Section 25-G of the Act also. It was therefore prayed that the retrenchment of the workman be declared illegal and he may be held entitled to reinstatement in service with full back wages and continuity in service.

The management contested the claim of the workman and contended in its reply that the workman has not came with clean hands. He was appointed in a temporary welfare schemes which were entrusted to the petitioner for execution. Such schemes were funded by Human Resources Ministry of Government of India under the non-formal education project. The workman was as such not

engaged in the institution of the petitioner. He was working only in the scheme/project run by the petitioner institution. In one of such schemes namely Mahila Bal Vikas Priyojna which was started on 02nd September, 1988. When the scheme/project was discontinued, the work came to an end and services of the respondent also stood terminated automatically. The office order dated 02nd February, 1990 would clearly show that the service of the petitioner stood terminated automatically from the closer of the scheme vide order dated 15th February, 1990. Although the services of the petitioner was terminated from 15th February, 1990 but the petitioner initially challenged the same before the court of Munsif-cum-Judicial Magistrate, Sardarshahar. On account of the injunction order passed in that case, he had to be continued in service. Later when the suit was dismissed, the petitioner was relieved from service on 24th May, 1990.

After recording evidence and hearing arguments of the parties, the learned labour court concluded that the removal of the workman was made in violation of Section 25-F, G and H of the Act inasmuch as no seniority list as required by Rules 77 and 78 was published by the management. The learned labour court therefore declared removal of the workman to be illegal and directed his

reinstatement in service with continuity. The court awarded to the workman a sum of Rs.2500/- as compensation for the mental agony suffered by him and held him entitled to back wages from the date of award till reinstatement.

I have heard Mr. Anil Vyas, learned counsel for the petitioner and Mr. Draun Kaushik, learned counsel for the respondents and perused the record.

Shri Anil Vyas learned counsel for the petitioner argued that the respondent-workman was engaged in the project for development of Women and Child in rural area which was funded by the Government of India. This project was entrusted to the petitioner only for its execution in the rural areas and commenced from 02nd September, 1988. Duration of the project was two years. The respondent-workman was temporarily engaged in non-formal education project. He was neither appointed against the regular pay scale nor was his recruitment made by any acceptable mode of recruitment. He argued that the learned labour court failed to appreciate the documents exhibited as M-1 to M-6. The learned labour court while recording the findings on this aspect omitted to consider those documents. Findings of fact recording by the learned

labour court without appreciating the evidence on record was therefore vitiated for non-application of mind and non-consideration of the relevant documents. It was argued that no evidence was led by the workman to prove that his appointment was made on permanent basis in the regular establishment of the petitioner in connection with his regular activities. All these facts were proved by the witnesses of the management namely Govind Narayan Sharma who in his statement also proved the fact that the persons named by the respondent, namely Vinod Kumar, Braj Lal, Mohan Singh, Pradeep Sharma, Pramod Sharma, Ashok Kumar and Mahaveer Sharma were appointed in the regular services of the petitioner and therefore there could be no comparison of the respondent No.2 with them. It was argued that removal of the respondent workman did not fall within the definition of retrenchment as given in 2(o) of the Act as it was covered by its exception Clause 2(oo) (bb) being an appointment on contract basis. It was argued that there was no justification for awarding a sum of Rs.2500/- on the head of mental agony. It was further argued that the learned labour court has wrongly wrongly placed the entire burden of proof on the question of violation of Sections 25-F, G and H of the Act on the management whereas no evidence whatsoever was produced by the workman.

Learned counsel for the petitioner has placed reliance on the judgments of Honble the Supreme Court in Batala Co-operative Sugar Mills Ltd. vs. Sowaran Singh reported in AIR 2006 SC 56, M/s Haryana State F.C.C.W. Store Ltd. & Anr. vs. Ram Niwas & Anr., reportd in AIR 2002 SC 2495, Executive Engineer, ZP Engg. Divn. & Anr. vs. Digambara Rao etc. reported in AIR 2004 SC 4839 and Stae of Rajasthan & Ors. vs. Rameshwar Lal Gahlot, reported in AIR 1996 SC 1001.

On the other hand, learned counsel for the respondent-workman argued that the award passed by the learned labour court is based on true and correct appreciation of the evidence on record inasmuch as the petitioner was initially engaged vide Exhibit-W-1 in the non-formal education in Ghandhi Vidhya Mandir itself and thereafter he was transferred to Capart Scheme vide Exhibit-W-3. He was thereafter appointed in Women and Child Development Project vide Exhibit-5. In this manner, the management had taken work form him at different places and it was merely a coincidence that lastly when he was posted in Women and Child Development Projects, the project itself came to an end. At the time of removal of the workman, he had completed more than 240 days in the continuous service of the management and yet the management did

not make compliance of Section 25-F of the Act. Many of his juniors were retained in service and many new were engaged after his retrenchment. The award passed by the learned labour court was therefore perfectly justified and does not call for any interference by this Court.

I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the record.

The document which were exhibited before the learned labour court have also been produced before this Court as annexed to the writ petition. Annexure-10 is the order of initial appointment of the respondent which is dated 03rd November, 1988. It would be evident that respondent was appointed for discharging his duties in the project of non-formal education on a fixed monthly salary of Rs.600/- for a fixed period from 26th October 1988 to 25th November, 1988 on purely temporary basis. He was thereafter by an order dated 24th January, 1989 reappointed in non-formal education but was transferred in the Capart Scheme. This appointment was to last up to 25th May, 1989. By subsequent order passed on 16th August, 1989 again the respondent was appointed in the Women and Child

Development Project for fixed monthly salary of Rs.600/- for the period from 16th July, 1989 to 15th October, 1989. When this scheme came to an end, the management by its order dated 02nd February, 1999 directed that the respondents services would stand terminated w.e.f. 15th February, 1990 on account of the closer of the scheme. This being the nature of appointment of the respondent, it would be clear that not only his appointment was temporary but the scheme in which he had been working was also temporary in nature. The very nomenclature of the scheme and the evidence produced by the management clearly shown that those schemes were funded by the Human Resources Ministry of Government of India and they were merely executing these projects.

The learned labour court has recorded a finding that he worked for the period from 26th December, 1989 to 24th May, 1990 thus for a total period of 19 months. But the learned labour court has also recorded a finding on the question of violation of Sections 25-F and H on the ground that not only the management retained many of his juniors when he was removed but also newly engaged certain persons after removal of the respondent. The learned labour court has recorded the finding that the management has not produced on record the notifications pursuant to which those

persons where appointed nor has produced their appointment orders so as to show their nature of appointment. I am afraid that in so far as violation of Sections 25-G and H is concerned, the kind of reasonings given by the learned labour court cannot be approved not because the management did not produce any evidence but on account of the fact that it was primarily for the workman to at least discharge the initial burden of proof regarding retention of his juniors when he was removed and appointment of the new incumbents after his removal.

In this connection, the evidence of the management has not been correctly appreciated by the learned labour court. All those documents which were produced before the learned labour court clearly indicate not only the nature of the appointment of the workman but also the fact that he was appointed in the project of non-formal education which was funded by the Central/State Government. The evidence of the management in this regard was quite categorical. Assertion of the management that the workman was engaged in temporary project was also required to be disproved by the workman.

I may in this connection usually refer to the observations of

the Hon'ble Supreme Court in Batala cited (supra) wherein also the workman was engaged on casual basis on daily wages for specific work and for specif period. Their Lordships of the Hon'ble Supreme Court in that case found that the evidence proved that the workman was engaged for specific period and specific work but the fact that he worked for 240 days was required to be proved by the workman and therefore the burden of proof would not lie on the employer and therefore the direction for reinstatement was set aside.

Again in a recently delivered judgment in Chief Engineer, Sanjeet Sagar Dam Vs. Sham Lal reported in AIR 2006 SC 2682 while reiterating such law with reference to more than twelve Supreme Court judgments on the point their Lordships held that burden of proof to prove that the workman had worked for more than 240 days lies on the workman himself and not on the management. Moreover, the Hon'ble Supreme Court in M/s Haryana State F.C.C.W. Store Ltd. cited (supra) held that when a person is engaged in a particular project which has came to an end and when the period of engagement is over and this would not amount to retrenchment. In another judgment cited by the learned counsel for the petitioner in Digambara Rao cited (supra) also their Lordships held that employees working under such schemes would not be

entitled to regularization merely because they have completed 240 days. In Rameshwar lal Gahlot cited (supra) also their Lordships held that once the court find that an appointment for a fixed period, Section 25-F does not apply as such appointment is covered by exception clause contained in Section 2(oo) (bb) of the Act.

Apart from above, there is no jurisdiction for awarding a sum of Rs.2500/- as compensation for mental agony. The concept of awarding compensation for mental agony is completely foreign to industrial law jurisprudence which may although be relevant for accident claim cases. However in the peculiar facts and circumstances of the case, when the learned labour court has found that the respondent-workman was engaged with the management for a period of 19 months and he was removed on 24th May, 1999, remand of the case at this stage would neither be appropriate nor in the interest of justice. However it would also not be in the interest of justice to now direct the management to reinstate the workman after more than 16 years. While the alleged retrenchment of the workman was made on 24th May, 1990, the reference was made on 15th April, 1993 and the award was passed on 20th May, 2000. Now when this petition is being disposed of in November, 2006, already more than 16 years have gone by since then. Ends of justice would

therefore be met if instead of reinstatement, the petitioner-management is required to pay lump sum compensation in lieu of the reinstatement which in the in facts of the present case is quantified in a sum of Rs.50,000/-.

In the result, the writ petition is partly allowed and the award passed by the learned labour court in so far as it directs reinstatement of the workman on the payment of Rs.2500 as compensation for mental agony is set aside. The petitioner however directed to pay to the respondent-workman Rs.50,000/- as lump sum compensation in lieu of reinstatement which payment may be made within a period of three months from the service of the judgment, failing which the petitioner shall be entitled to interest @ 6% per annum from the date of this judgment till payment is actually made.

The writ petition is accordingly disposed of in terms of the aforesaid directions.

[MOHAMMAD RAFIQ],J.

A.K.Chauhan/-